IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 905 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
MADHUSUDAN LAVJI MEHTA - Opponent(s)

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Appearance :
MR HL JANI Ld. APP for Appellant(s) : 1,
MR YOGESH S LAKHANI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/10/2007

ORAL JUDGMENT

1. By way of this appeal, the State has challenged the judgment and order dated 31.7.1997 passed by the learned Judicial Magistrate First Class, Mundra,

Kutchh in Criminal Case No. 97 of 1993, whereby, the accused-respondent has been acquitted for the offence punishable under sec. 409 of IPC.

2. It is the case of the prosecution that from 8.9.89 to 23.1.92 the accused- respondent was serving as Post Master in Mota Kandagar Post Office and has misappropriated the amount from the savings account nos. (i) 221433 Rs. 20,000/-, (ii) 221589 Rs. 7000/-, (iii) 221377 Rs. 400/-, (iv) 10069 Rs. 1000/-, (v) Indira Vikas Patra of Rs. 6000/- and (vi) Rs. 2000/- for new saving account. In all, as per prosecution case, the respondent has misappropriated Rs. 36,400/. After the completion of investigation and recording of the statement of complainant dated 29.7.1992, the complaint was lodged and charge-sheet was filed at ex. 8. The accused pleaded not guilty and therefore, the prosecution has examined following witnesses:

1. Dapuji Parkhanji Ex. 12
2. Jakhu Gopal Gadhavi Ex. 51
3. Umareben Virji Ex. 52
4. Amad Dada Ex. 54
5. Bai Rajba Velubha Ex. 55
6. Manubha Velubha Ex. 56
7. Ramji Bharu Ex. 57
8. Narayan Tukaram Bhagwat Ex. 60
9. Dharmkishor Harilal Mehta Ex. 63
10. Manubhai Popatbhai Ex. 75
11. Mangalgar Pradhangar Ex. 79

12.Chandulal Popatlal Pandya Ex. 95

3. The prosecution has also produced several documents on the record of the case. After considering the evidence on the record of the case, the trial court has come to the conclusion that the investigation was not carried out properly and the statements of the witnesses were recorded by the Inspector of the Post Office which was not proper and is contrary to sec. 160 to 164 of CrPC and misappropriation is not proved beyond reasonable doubt and original documents were not produced by the Post office. In that view of the matter, ingredient of sec. 409 of IPC is not satisfied. In para-12 of the judgment, the trial court has considered the same.

4. The learned APP Mr. Jani for the appellant was not in a position to show the evidence on record to reverse the finding of the trial court. The principle which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse. Even in a recent decision of the Apex Court in the case of

State of Goa v. Sanjay Thakran & Anr. Reported in (2007)3 SCC 755, the Court has reiterated similar principle. In para-16 of the said decision, the Court has observed as under:

> "16. From the aforesaid decisions, it it apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse, Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with."

5. The Apex Court in a recent decision reported in **2007 AIR SCW 5553** in the case of **State of Uttar Pradesh vs. Ram Veer Singh & Ors.,** in para-9 has held as under:

> "9.There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is

> further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. *(see Bhagwan Singh and Ors. v. State of Madhya Pradesh (2002(2)Supreme 567).* The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this court in *Shivaji Sahabrao and Anr. v. State of Maharashtra (AIR 1973 SC 2622); Ramesh Babulal Doshi v. State of Gujarat (1996(4)Supreme 167); Jaswant Singh v. State of Haryana (2000(3)Supreme 320); Raj Kishore Jha v. State of Bihar and Ors. (2003(7) Supreme 152); State of Punjab v. Karnail Singh (2003(5) Supreme 508); State of Punjab v. Pohla Singh and Anr. (2003(7) Supreme 17) and V.N. Ratheeshv. State of Kerala (2006(10) SCC 617).”*

6. The Apex Court in a decision reported in **2007 AIR SCW 5589** in the case of **Girja Prasad (Dead) by L. Rs. vs. State of M.P.,** in paras-27, 28 & 29 has held as under:

> “27. An appeal against acquittal is also an

appeal under the Code and an appellate Court has every power to reappreciate, review and reconsider the evidence as whole before it. It is, no doubt true that there is presumption of innocence in favour of the accused and that presumption is reinforced by an order of acquittal recorded by the trial Court. But that is not the end of the matter. It is for the appellate Court to keep in view the relevant principles of law, to reappreciate and re-weight the evidence as a whole and to come to its own conclusion on such evidence in consonance with the principles of criminal jurisprudence.

28. In Shivaji Sahabrao Bodade v. State of Maharashtra, (1973)2 SCC 793, dealing with a similar situation, a three Judge Bench speaking through V.R. Krishna Iyer, J. Stated:

> “Even at this stage we may remind ourselves of a necessary social perspective in criminal cases which suffers from insufficient forensic appreciation. The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs thro' the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise, any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light-heartedly as a learned author has sapiently observed, goes much beyond the simple fact that just one guilty persons has gone unpunished. If unmerited acquittals become general, they tend to lead to a

> cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent...." In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing enhance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents."

29. Recently, *in Chandrappa v. State of Karnataka, (2007)4 SCC 415: JT (2007) 3 SC 316,* after considering the relevant provisions of the old Code (Code of Criminal Procedure, 1898) and the present Code (Code of Criminal Procedure, 1973) and referring to decisions of the Privy Council and of this Court, one of us (C.K. Thakkar, J.) laid down certain general principles regarding powers of Appellate Court in dealing with appeal against an order of acquittal. In para 42 it was observed:

"42.From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1)An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2)The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of

fact and of law;

(3)Various expressions, such as, substantial and compelling reasons, good and sufficient grounds, very strong circumstances, distorted conclusions, glaring mistakes, etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of flourishes of language to emphasize the reluctance on an appellate court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4)An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5)If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."

7. Keeping in mind the ratio laid down by the Apex Court in the aforesaid judgment of the Apex Court, it is very difficult to reverse the finding of the trial court inasmuch as nothing is produced or shown from the record of the case that the amount is actually misappropriated even temporarily by the respondent.

8. In that view of the matter, I am of the opinion that the trial Court was completely justified in

acquitting the respondent of the offences alleged against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same. I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of **State of Karnataka v. Hemareddy** reported in **A.I.R. 1981 S.C. 1417,** wherein, it is held as under:

> "...This court has observed in Girija Nandini Devi v. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

9. In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial court concerned forthwith.

(K.S. JHAVERI, J.)

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